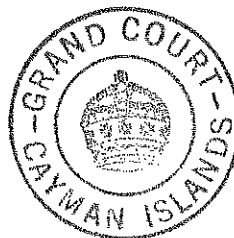


1 Permanent Residency be referred back to the Immigration Appeals
2 Tribunal for reassessment in accordance with the rules of natural
3 justice as indicated in the grounds for the appeal;

- 4
- 5 iii) A declaration that the 'points system' used by the Permanent
6 Residency and Status Board to qualify applications for permanent
7 residency in the Islands is inherently flawed, unfair and results in
8 substantial wrongs and miscarriages of justice.

9
10
11 The grounds of appeal were as follows:

- 12 1. The appellant appearing before the Immigration Appeals Tribunal on
13 2 December 2010 seeking permanent residency under the 'points
14 system' was not allocated any points at all under the category
15 'Knowledge and Experience'. The lack of points in this category
16 resulted in the dismissal of her application. The reason given by the
17 Tribunal for not allocating points in this category was that despite
18 the fact that an offer of employment as a sales representative had
19 been made to the applicant and substantiated "there was no proof"
20 that the appellant had any experience or knowledge in the position
21 of 'sales representative'.
- 22
- 23 2. Given the extensive and varied employment record of Mrs.
24 Davidson mostly in areas of 'customer service' (and made available
25 to the tribunal) the Tribunal not only acted unreasonably i.e. did not
26 apply logical or rational principles to their discretionary decision, but
27 also disregarded a relevant consideration i.e. Mrs. Davidson's work
28 experience generally, perhaps through a mistaken impression that
29 the category required a literal interpretation.



1 3. Further, since the applicant had a Caymanian child the tribunal had
2 a shared interest in establishing a more positive approach to the
3 points system generally with regard to the appellant's application
4 and in particular, the category described as Knowledge and
5 Experience. Allocation or non-allocation of points in other categories
6 (such as Financial Assessment) is also suspect.

7

8 4. The non-allocation of points under the heading Knowledge and
9 Experience (a 12 point deduction from previous allocations) was
10 erroneous in law, unfair, unreasonable and contrary to the
11 principles of natural justice. Further the decision was based on
12 ignorance and or mistake as to the intention of the legislature and
13 or immigration policy framers in devising the category labelled
14 'Knowledge and Experience'.

15

16 5. In conclusion, additional evidence by way of substantiating the work
17 experience of the appellant and its relationship to the position of
18 sales representative will be provided to the Court should leave be
19 granted.

20

21 Previously, leave had been granted to extend the time for submitting the
22 appeal.

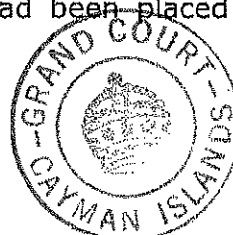
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24

25 **The Agreed Facts**

26 The following facts are extracted from the Applicant's affidavits and the
27 affidavit of the Respondent filed on March 5, 2013, sworn by Natasha
28 Bodden, coordinator of the Immigration Appeals Tribunal. These detail the
29 events surrounding the applications which had been placed before the
30 Board by the Applicant.

31



1

2 Pursuant to the enactment of the Immigration Regulations, 2004, a point
3 system came into effect. Whenever an application for permanent
4 residency was placed before the Caymanian Status and Permanent
5 Residency Board ("the Board"), that Board when making determinations
6 was required to take into account the overall suitability of an applicant.
7 This was as measured against the criteria set out in section 29(2)(c) of
8 the Immigration Law, 2003 as well as the application of the points system
9 set out in the second schedule to the immigration regulations.

10 A minimum score of 100 points was required so as to guarantee
11 consideration for permanent residence. Despite changes to the
12 Regulations over the years, this requirement remained constant.

13

14

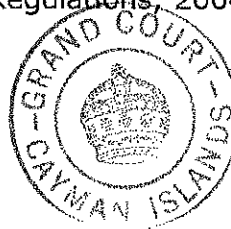
15 The Applicant's first application for permanent residency and an
16 employments right certificate was refused on April 3, 2008 due to
17 insufficient points. At the time the Applicant was employed as a police
18 officer under a two-year contract. She received 10 points under the
19 category "Occupation", 10 points under the category "Knowledge and
20 Experience" and 17 points under the category "Job Skills". She was
21 advised to obtain proof that she had a Caymanian child by way of a DNA
22 test and to resubmit her application so that she could be awarded points
23 under the category "Close Caymanian Connections".

24

25 According to the Respondent, although the Applicant had failed to achieve
26 the required 100 points, the Board effectively deferred the application to
27 allow the Applicant an opportunity to provide proof that she had a child
28 who had been fathered by a Caymanian.

29

30 The Second Schedule to the Immigration Regulations, 2004 called for the
31 allocation of points as follows:



1

- 2 (i) Occupation - Maximum 20 points
- 3 (ii) Knowledge/Experience - Maximum 20 points
- 4 (iii) Skills - Maximum 20 points
- 5 (iv) Fund and Salary - Maximum 40 points
- 6 (v) Contribution to the Community - Maximum 20 points
- 7 (vi) History/Culture Test - Maximum 20 points
- 8 (vii) Close Caymanian Connection - Maximum 60 points

9

10 Points could be deducted under the categories: "Character and Health";
11 "Demographics" and "Other Mitigating Factors".

12

13

14 The first application went before the Board for consideration on April 3,
15 2008. At that time the original regulations had been replaced by the
16 Second Schedule to the Immigration (Amendment)(No.3) Regulations,
17 2006.

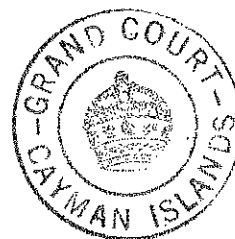
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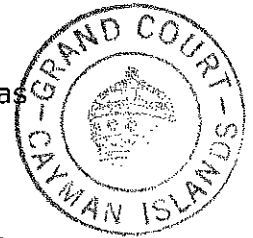
19 The 2006 Regulations had the following categories and allocation of
20 points:

21

- 22 (i) Occupation - Maximum 20 points
- 23 (ii) Knowledge/Experience - Maximum 25 points
- 24 (iii) Skills - Maximum 20 points
- 25 (iv) Fund and Salary - Maximum 20 points
- 26 (v) Contribution to the Community - Maximum 20 points
- 27 (vi) History/Culture Test - Maximum 20 points
- 28 (vii) Financial Assessment - Maximum 20 points
- 29 (viii) Close Caymanian Connection - Maximum 60 points

30





1 Under the 2006 regulations the category "Knowledge/Experience" was
2 divided into three sub-categories namely:

3

4 *a. Number of years of experience in field (points based on 1 point for*
5 *each year after minimum threshold of two years with a maximum of 15*
6 *years) – maximum 15 points;*

7 *b. Degree program qualifications and/or professional/postgraduate*
8 *qualifications – maximum 10 points;*

9 *c. Skilled tradesmen – maximum 10 points.*

10

11 As set out in the Respondent's affidavit the regulations stipulated that in
12 determining the number of points to be allocated under the aforesaid sub-
13 categories, the Board was required to take into account the finding under
14 the category "Occupation".

15

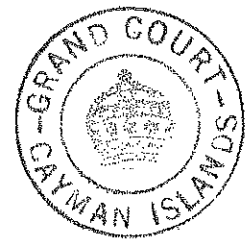
16 By letter dated March 27, 2009 the Applicant informed the Board that her
17 child had been granted the Right to be Caymanian and requested that her
18 application be considered by the Board. In that letter she also notified the
19 Board that she was unemployed. On June 4, 2009 according to the
20 Respondent the Board reconsidered the Applicant's application in
21 accordance with the new points system which was in place.

22

23 Under the Second Schedule of the Immigration Regulations (2007
24 Revision) the following were the categories and allocation for points:

25

- | | | |
|--------------------------------------|---|-------------------|
| 26 (i) Occupation | - | Maximum 20 points |
| 27 (ii) Knowledge/Experience | - | Maximum 25 points |
| 28 (iii) Skills | - | Maximum 20 points |
| 29 (iv) Fund and Salary | - | Maximum 20 points |
| 30 (v) Contribution to the Community | - | Maximum 20 points |
| 31 (vi) History/Culture Test | - | Maximum 20 points |



- 1 (vii) Financial Assessment - Maximum 20 points
2 (viii) Close Caymanian Connection - Maximum 40 points
3 (ix) General - Maximum 20 points

4

5 In the new regulations; the category "General" had been added to allow
6 consideration of "the desirability of granting permanent residence to
7 applicants with different backgrounds and from different geographical
8 areas in order to maintain a suitable balance in the social and economic
9 life of the country".

10

11 After the re-submitted application was heard the Applicant received 10
12 points under the category "Occupation", 12 points under the category
13 "Knowledge and Experience" and 17 points under the category "Job
14 Skills". She received an additional 40 points under the category "Close
15 Cayman Connections". The minimum required points being 100, the
16 Applicant had been awarded sufficient points for a successful application.

17

18 The Board took into account, a domestic complaint which had been filed
19 against Applicant. As a result 20 points were deducted under the heading
20 "Other Mitigating Factors". This deduction left the applicant with a total of
21 89 points, after having received a total of 109 points.

22

23 An appeal was then lodged.

24

25

26 **The Applicant's Position**

27 According to the Applicant, at the appeal hearing which took place on
28 December 2, 2010, she provided the Board with details of her new job at
29 Island Companies Ltd. as a sales representative. The Applicant stated that
30 at this hearing she only expected to be confronted about the issue which

1 had caused her to lose 20 points at the previous hearing and to
2 substantiate her job status.

3
4 According to the Applicant the Tribunal concentrated their questions on
5 her boyfriend's character and issues which arose in the earlier letter of
6 complaint. She stated that there was no discussion about her employment
7 with Island Companies Ltd. or whether or not she had the requisite
8 experience and skills to maintain the job of sales representative.

9
10 In January 2011 the Applicant was advised of the outcome of the 2010
11 hearing.

12
13 She claimed that the Tribunal "restored" the 20 points previously
14 deducted. In any event, she was in fact again awarded 40 points under
15 the category "Close Caymanian Connections".

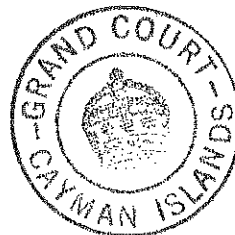
16
17 The issue which now arose related to the Applicant's job as a sales
18 representative. She received 12 points under the category "Occupation"
19 (a 2 point increase), 14 points under the category "Job Skills" (a 3 point
20 deduction) and but no points under the category "Knowledge and
21 Experience".

22
23 The letter from the Immigration Appeals Tribunal dated 26th January 2011
24 stated as follows:

25
26 *"Knowledge and Experience: the Tribunal awarded 0 points as the*
27 *Appellant had no years of experience as a Sales Representative. There*
28 *was no proof to confirm."*

29
30 The letter also stated:

31



1 *"General: the Tribunal awarded 0 points as the Appellant is Jamaican*
2 *which made up 42.50% of the current workforce."*

3
4 The Applicant submitted that the last remark represented a breach of
5 human rights pursuant to the European Human Rights Act which extends
6 to the Cayman Islands. Counsel for the Applicant did not go into detail on
7 this point; but he also commented on the fact that the Applicant had been
8 denied points on the basis of her Jamaican nationality.

9
10 Counsel for the Applicant also challenged the fact that only minimal points
11 had been awarded under the category "Funds and Salary" given the
12 Applicant's salary of \$18,000 per annum plus commission. She was only
13 awarded 2 points out of a possible 20 points which it was submitted;
14 represented a reduction of 11 points which had been allocated at previous
15 Board hearings. Counsel also argued that the wages of the Applicant's
16 husband should have been taken into account.

17
18 The Applicant contended that the Board utilised different immigration
19 rules at each hearing, the rules having changed during the period in
20 question. It was submitted that this constituted procedural impropriety.

21
22 With reference to Order 55 rule 7(7) of the Grand Court Rules (1995
23 Revision) it was argued that a substantial wrong or miscarriage of justice
24 had been occasioned to the Applicant when no points were awarded to
25 her under the category "Knowledge and Experience" during the 2010
26 hearing.

27
28 Counsel for the Applicant submitted that the Tribunal had fallen into error
29 when based on the same employment prospects; the Applicant was
30 awarded significant points under the categories "Occupation" and "Skills"
31 but not under "Knowledge and Experience".



1

2 It was argued that the Respondent failed to take into account the fact
3 that the Applicant, based on her resume, showed that she had over
4 twenty years of experience in the work force including experience in sales
5 and customer relations. Further it was argued that, contrary to the
6 requirements of sub-categories "b" and "c" under this heading, there was
7 no such thing as a sales representative qualification unless a person is
8 trained and certified in a particular field or business.

9

10 The Applicant's Counsel submitted that the Tribunal's exercise of
11 discretion in not allocating points under the category "Knowledge and
12 Experience" represented a breach of natural justice and a denial of
13 procedural fairness.

14

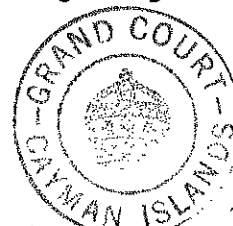
15 The Court was asked to consider that despite being aware that the
16 Applicant was unemployed at the time of the June 4, 2009 hearing, the
17 Board still awarded her points under the category "Knowledge and
18 Experience" based on her knowledge and experience as a police officer
19 and her skills in that job.

20

21 Further; but for the points deducted based on the letter of complaint
22 which was considered, the Applicant would have had sufficient points for a
23 successful application for permanent residency with the right to work. It
24 was argued that it was due to this letter of complaint that an appeal was
25 successfully entered and that the lost points were reinstated.

26

27 It was stressed that at the 2010 hearing the Applicant had not been
28 asked to prove whether or not she had the requisite job knowledge and
29 experience because this subject was never raised. Despite being aware
30 that the Applicant had been offered a position as a sales representative,
31 the Tribunal never directed any questions to her regarding her new



1 employment position and whether she felt she was qualified to undertake
2 the employment.

3

4

5 Counsel submitted that the Tribunal not only acted unreasonably and did
6 not apply logical or rational principles to their discretionary decision but it
7 also disregarded the relevant consideration of the Applicant's work
8 experience generally.

9

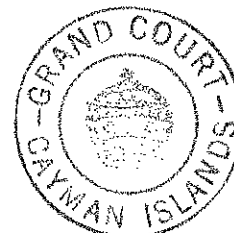
10 It was submitted that the relevant sub-category was not exhaustive. The
11 criteria did not indicate that points could not be awarded for years of
12 experience in any other types of employment which would have a direct
13 bearing on the employment under discussion. It was argued that the
14 Applicant's work experience clearly put her in this position.

15

16 It was submitted that the Applicant had a legitimate expectation that if
17 she could convince the Tribunal in December 2010 to disregard the letter
18 of complaint, her points would have been reinstated and she would easily
19 reach the desired 100 points. It is conceded that no such promise had
20 been made to the Applicant but it was submitted that her assumption and
21 expectation that there would be no drastic reduction in points that had
22 previously been allocated; were reasonable.

23

24 Counsel cited the case of Mohanty v Health Practitioners Board 2001 CILR
25 459. That case concerned the judicial review of the respondent's decision
26 not to register the appellant as a specialist urologist with the Government
27 Health Service Authority. The board's decision was found to be
28 *Wednesbury* unreasonable as it based its decision on considerations to
29 which it had given manifestly inappropriate weight and it had not
30 considered the true value of the applicant's experience and taken it into
31 account.



1

2 According to Counsel, the Applicant had not been aware that the Tribunal
3 was going to review the points previously awarded under the categories
4 "Knowledge and Experience" and "Funds and Salary". She only became
5 aware that this had been done when she learned that she had been
6 unsuccessful in her application. As such she had been given no chance of
7 addressing these issues. It was submitted that this procedure was unfair
8 and a breach of natural justice.

9

10 According to Counsel for the Applicant the point of law for the
11 consideration of the Court is how the Tribunal arrived at the decision not
12 to award any points. It was submitted that it misunderstood the criterion
13 of one point for every year. Further the Applicant was given no
14 opportunity to address the issue. As such the decision was arrived at on
15 procedurally improper and unfair bases.

16

17 Counsel for the Applicant briefly raised the issue of the Applicant's
18 Caymanian child. It was submitted that the purpose of awarding points
19 under the category "Close Caymanian Connection" was to encourage
20 persons with such connections to remain in the country and where
21 appropriate, honour their family obligations. In this case, the Applicant
22 has a Caymanian son and it was submitted that she should have been
23 given appropriate and adequate points during the hearing on December 2,
24 2010 which would have enabled her to receive the right to work in the
25 country and maintain a stable family environment for the child. Counsel
26 referred to the maxim that a child's best interests are of paramount
27 importance in every matter concerning the child and noted that it could
28 be found in the Cayman Islands Constitution.

29

30 Although it was raised in his written submissions, Counsel for the
31 Applicant confirmed that the Court was not being asked to make a



1 Declaration about the validity of the points system which is used under
2 the law.

3

4

5 **The Respondent's Position**

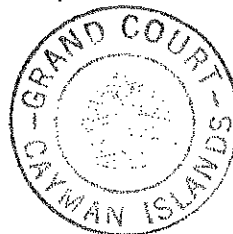
6 It was stated in the Respondent's affidavit that in response to the
7 Applicant's notice of appeal dated June 26, 2009, the Chairman of the
8 Tribunal allowed the Applicant to file detailed grounds of appeal 56 days
9 out of time. It was also stated that in the interests of natural justice the
10 Chairman also allowed the Applicant extended time to seek and obtain a
11 letter of offer of employment to better facilitate her chances at her
12 permanent residence appeal.

13

14 The Tribunal found that grounds of appeal had been made out and a
15 hearing de novo was granted to the Applicant. At her request, the
16 Applicant was allowed to attend and speak to her matter. On December 2,
17 2010 the Respondent considered the Applicant's appeal by way of
18 rehearing in accordance with section 16(7) of the Immigration Law (2009
19 Revision) and the Immigration Regulations (2009 Revision). The
20 categories and allocation of points remained the same as in the 2007
21 regulations. On this occasion however, the Tribunal had other
22 considerations.

23

24 In her affidavit, Ms. Natasha Bodden stated that the Applicant's ability to
25 provide sufficient funds for herself and her three dependents was
26 considered of paramount importance for prospective long-term residents.
27 The Applicant, with an annual income of \$18,000.00 failed to satisfy the
28 Tribunal that she had sufficient resources through income or investments
29 to provide sufficient financial support. Thus under the category "Funds
30 and Salary" the Applicant was only awarded 2 points out of a possible 20
31 points.



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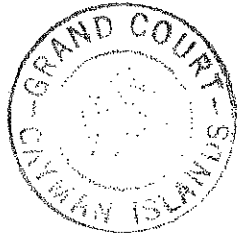
According to Ms. Natasha Bodden, when considering the category "Knowledge and Experience" the Respondent took account of the fact that the Applicant was no longer working as a police officer. This category required points to be allocated based on an applicant's years in the field in which he is employed at the time of the consideration of the application. On this occasion zero points were allocated, due to the fact that the Applicant had no "years" of experience in the field of "sales-making".

It was submitted that due to the enactment of the Immigration (Amendment)(No.4) Regulations, 2006, the requirement that the Board and the Tribunal take into account its findings under the category "Occupation" in determining the number of points to be allocated under the sub-categories "a","b"or "c" had been removed. It was further submitted that the Applicant had not provided proof which would have allowed the Respondent is to allocate points under sub-categories "b" or "c". The Respondent had requested that the Applicant provide education certification which could have potentially increased the points awarded in this category but the Applicant failed to do so.

Counsel for the Respondent argued that the Applicant's appeal should be dismissed. It was submitted that the Applicant's grounds as stated in the Originating Motion did not raise points of law but points of fact which were outside the jurisdiction of the courts.

Section 17 (2) of the Immigration Law (2009 Revision) provides:

"an appeal may be made to the Grand Court from a decision of the Immigration Appeals Tribunal on a point of law only."



1 The Respondent argued that the first ground of the Applicant's Originating
2 Motion referred to the reason given by the Respondent for not allocating
3 points to the Applicant for the category "Knowledge and Experience". It
4 was submitted that the decision of the Respondent that the Applicant
5 provided no proof of experience or knowledge in the position of sales
6 representative, raised no question of law but of facts.

7

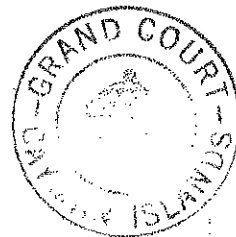
8 Counsel for the Respondent also argued that the third and fifth grounds of
9 appeal filed by the Applicant also raised no question of law to which the
10 Respondent would be required to respond. It was argued that these
11 grounds should be struck out. Counsel, however, did state in response to
12 the Applicant's submission that the fact that a person has a Caymanian
13 child is dealt with separately under the rules. The Board was not
14 empowered to give separate points in other categories because a
15 Caymanian child is involved.

16

17 As it related to the Applicant's second ground that the Respondent had
18 acted unreasonably by disregarding irrelevant consideration being the
19 Applicant's work experience generally through a mistaken impression that
20 the category required a literal interpretation. It was argued that the
21 Applicant had provided no evidence that the Respondent had disregarded
22 Applicant's work experience generally.

23

24 It was Respondent's submission that consideration was given to
25 Applicant's work experience generally in accordance with the provisions of
26 the Immigration Law (2009 Revision) and the Second Schedule to the
27 Immigration Regulations (2009 Revision). The category required points to
28 be allocated based on the Applicant's years in the field in which she was
29 employed at the time of the consideration of her application. Due to the
30 Applicant's lack of "years" of experience in the field of sales making she
31 was allocated 0 points.



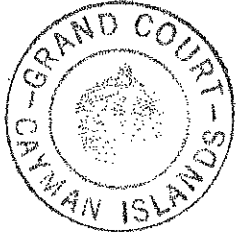
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Counsel for the Respondent made reference to the points system set out in the Second Schedule to the Immigration Regulations (2009 Revision). This divided the category of "Knowledge and Experience" into three sub-categories as mentioned before. In an explanation of the category "Knowledge and Experience"; the regulations stated that "the points given for experience are calculated based on one point for every year worked in the job."

Referring to the Respondent's affidavit, Counsel submitted that in an effort to assist the Applicant; the Respondent in an exercise of its discretion extended the time for the hearing of the appeal so as to allow her the opportunity to identify alternative employment given that she was no longer employed as a police officer.

The Respondent at the hearing reviewed the Applicant's contract of employment with Island Companies Ltd. It also reviewed her resume which showed her years of experience working as a police officer, secretary/administrator, cashier, cook, clerical officer, receptionist, waitress, manager for both an inn and a restaurant and a sales associate/supervisor. The Respondent also took into account the Applicant's job as a sales maker with Island Companies Ltd which post at the time she held for less than three months.

The Applicant's experience generally was considered by the Respondent but no points were awarded based on the requirements of the regulations. At that point in time she had not yet acquired any "years" of experience in the job in which she was employed. The award of 0 points by the Respondent was a matter of fact which properly fell within the purview of the Respondent.



1 Counsel for the Respondent submitted that in assessing the category of
2 "Knowledge and Experience" the Respondent had acted in compliance
3 with the provisions of the Regulations. It was therefore submitted that no
4 question of law arose which would activate the jurisdiction of the Court.

5

6 Counsel for the Respondent submitted that an allegation of failure to take
7 into account relevant considerations would be a question of law. However
8 in the absence of evidence to prove the Applicant's allegations that the
9 Respondent acted unreasonably and disregarded her experience
10 generally, such allegations as contained in the second ground of the
11 Originating Motion was an attempt by the Applicant to raise mixed
12 questions of law and fact which would be outside of the jurisdiction of the
13 Court.

14

15 The Respondent relied on the ruling of Mr. Justice Henderson in the case
16 of The Final Touch Ltd. v The Labour Appeals Tribunal and Norman
17 Wilkins (unreported dated 5th January 2009). That case dealt with an
18 appeal under section 79(1) of the Labour Law which is analogous to the
19 provisions of section 17 (2) of the Immigration Law (2009 Revision).

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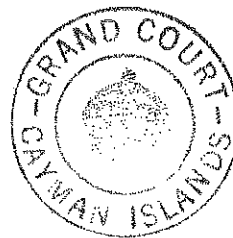
21 In that case the learned judge stated:

22 *"Questions of facts and questions of mixed law and facts are*
23 *excluded from consideration. On an appeal of this sort, the*
24 *jurisdiction of the Grand Court is a narrow one."*

25

26 Counsel submitted that the jurisdiction of the Courts in the instant case
27 had not been invoked and as such the appeal should be dismissed. It was
28 also submitted that the fourth ground of the Applicant's appeal
29 represented a repeat of the allegations made in the second ground of the
30 Originating Motion.

31



1 Counsel argued in the alternative that if the Court considered that its
2 jurisdiction had been invoked then the Applicant's appeal should still be
3 dismissed on the following basis:

4

5 "The award of "0" point to the category 'knowledge/experience' was a
6 proper exercise of the respondent's statutory authority."

7

8 According to Counsel for the Respondent it was a requirement of section
9 16(7) of the Immigration Law(2009 Revision) that an appeal from a
10 decision of the Caymanian Permanent Residency Board proceed by way of
11 rehearing by the Immigration Appeals Tribunal".

12

13 Further, according to section 16(8) of the said law:

14

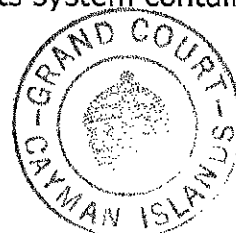
15 *"The Immigration Appeals Tribunal, when hearing an appeal may take*
16 *into account fresh evidence and any change in circumstances that may*
17 *have arisen in relation to the parties."*

18

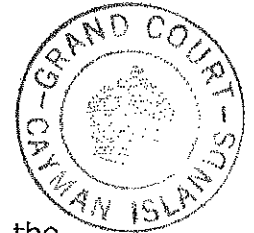
19 Counsel for the Respondent argued that the Immigration Appeals Tribunal
20 was not confined on an appeal to the ruling of the Board but was
21 statutorily required to hear the application *de novo*. Further, the Tribunal
22 was allowed to consider fresh evidence and any change in the applicant's
23 circumstances. As such the exercise of the Respondent's discretion in the
24 assessment of the points to be allocated to an applicant would be guided
25 by the current circumstances of the applicant. It was therefore incorrect
26 for the Applicant herein to state that she had "lost" points from a previous
27 allocation.

28

29 It was submitted that the allocation of "0" to the category "Knowledge
30 and Experience" was based on the Respondent's proper interpretation and
31 application of the criteria as set out in the points system contained in the



1 2009 revision of the Immigration Regulations. The authority to determine
2 the number of points to allocate to any given category lay with the
3 Respondent. Despite its position, Counsel for the Respondent invited the
4 Court's interpretation concerning whether or not the interpretation of
5 "points per number of years" was too narrow.



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7
8 **Findings**

9 I turn at this point to the five grounds of appeal which are before the
10 Court.

11
12 I concur with the submission of Counsel for the Respondent that the third
13 and fifth grounds of appeal filed by the Applicant raise no question of law
14 to which the Respondent should be required to respond. Accordingly,
15 these grounds are dismissed.

16
17 I do also find that the first ground of the Applicant's Originating Motion as
18 framed, referencing the reason given by the Respondent for not allocating
19 points to the Applicant for the category "Knowledge and Experience"
20 raises no question of law but of facts. This ground is also dismissed.

21
22 Left for the Court's consideration are the second and fourth grounds
23 which are inter-related.

24
25 It is understood, that the main grievance of the Applicant is that if the
26 Immigration Appeals Tribunal had merely restored the lost 20 points to
27 her application, after reviewing the letter of complaint, she would have
28 qualified for permanent residency.

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30 This concept of the manner in which the Immigration Appeals Tribunal
31 operates is inaccurate. As was previously stated, it was a requirement of

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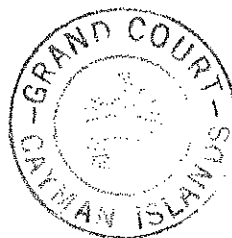
section 16(7) of the Immigration Law(2009 Revision) that an appeal to the Tribunal from a decision of the Caymanian Permanent Residency Board proceed by way of rehearing. The Tribunal was also empowered to take into account fresh evidence and any changes in the circumstances of the Applicant. Further, it was entirely appropriate that the Tribunal apply the current laws when awarding points.

No promise had been made to the Applicant that there would not be a rehearing or that points would not be awarded pursuant to current guidelines. As such no legitimate expectation could be said to have arisen.

There is nothing in the evidence adduced to suggest that the Tribunal disregarded the Applicant's work experience generally as stated in the second ground of appeal. Contrarily, the points awarded under the categories "Occupation" and "Job Skills" demonstrated a consideration of the Applicant's resume. The quantum of points to be awarded is a matter entirely for the Tribunal's discretion and there is no evidence adduced that this discretion was improperly applied.

The Tribunal was required to award points under the category "Knowledge/Experience" with regard to the three sub-categories. I do not find that the Tribunal's interpretation of the explanation for "number of years in the field" was erroneous, that is one point for each year after a minimum threshold of two years; with reference to the Applicant's current position in sales. As such I am unable to find that the decision to award zero points in this category was erroneous in law, unfair or unreasonable.

The Immigration Appeals Tribunal had granted the Applicant's request to address it at the December 2, 2010 hearing.



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2 It was not raised as a formal ground of appeal, however the Applicant did
3 allege and written submissions were made, that she was never given an
4 opportunity to address her "knowledge and experience" at the hearing.
5 This allegation went unchallenged by the Respondent and I accordingly
6 accept it as a fact.

7

8 I do find that the Tribunal failed in this respect to grant the Applicant a
9 fair hearing on what was an important area of consideration. The
10 Applicant's responses may have had no effect on the Tribunal's allocation
11 of points under this category, but as a matter of law, the Tribunal acted
12 unfairly in failing to allow her an opportunity to address this issue. This
13 constituted a breach of natural justice and I accordingly set aside the
14 decision of the Tribunal and allow the Applicant's appeal.

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16 The matter is referred back to the Immigration Appeals Tribunal for
17 rehearing.

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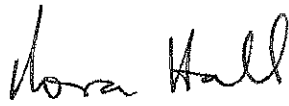
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Nova Hall

Judge of the Grand Court (Acting)

15th October 2013.

